IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.596 OF 2005

Firtu Jaganu Jaiswal .. Appellant

Vs.

1. The Mumbai Municipal Corporation and ors. .. Respondents

Ms. Indira Reddy h/f Mr. Rajesh Kachare for appellant.
None for the respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 21, 2005.

P.C.:

1. Heard the learned counsel for the appellant who is plaintiff in L.C. Suit No.347 of 2005. Notice of Motion No.263 of 2005 was moved in the said suit and the prayer for ad-interim stay order was refused by the City Civil Court at Mumbai. The plaintiff approached this court in A.O. No.152 of 2005 by filing two additional documents viz. (1) a copy of the notice under Section 351 issued by the Mumbai Municipal Corporation and (2) map of the City Survey. This court, therefore, remanded the matter to the City Civil Court to decide the prayer for ad-interim relief afresh. By the impugned order dated 3/5/2005 the

parties were heard after the Mumbai Municipal Corporation filed its reply.

2. The plaintiff was claiming tenancy right over the suit premises through another tenant Mr. Mohite but there were no documents in support of his contentions. A xerox copy of the declaration dated 22/10/1982 was submitted and the declaration was found in respect of "bakda", whereas the suit property was claimed to be a wooden structure. The other two documents viz. (1) the notice dated 11/6/1980 issued under Section 351 of the MMC Act and the map of City Survey were also considered. It was noted that these documents were also considered when the prayer for ad-interim relief was refused in the first round and even otherwise the said notice was of no use to prove the authorisation of the structure prior to the datum line. The Corporation in its reply had stated that the suit structure falls within the road line area and it is not assessed to taxes. On the show cause notice the defendants have given an opportunity of hearing before the order dated 18/1/2005 was passed directing removal of the suit structure within 24 hours. It was

under these circumstances that the trial court came to the conclusion that there was no case made out for granting ad-interim stay.

3. No fault could be found with the view taken by the trial court and, therefore, this appeal fails. Hence, the appeal is dismissed in limine.

(B.H. Marlapalle,J.)